



Editorial Opinion

By Jerome Sapiro, Jr.

— Perpetual Metamorphosis —

Unfortunately, changes in our profession are the rule rather than the exception. My perception is that changes are occurring at an accelerating rate. A few examples will illustrate my point.

Each year, our Section publishes the *California Litigation Review*. This year's edition contained ninety-eight pages summarizing changes in the law affecting litigation practice during 2000. Just its table of authorities occupied sixteen pages.

Three times a year, *California Litigation* publishes summaries of current and predicted future developments in particular areas of litigation practice. The Editorial Board works throughout the year to keep us abreast of current developments, warn us of potential pitfalls and give us the opportunity to learn from the experience of others. The authors of the articles that appear in this journal evoke thought, provoke planning and promote change.

Even the government changes our roles. Last year, I used to just practice law. Now, the United States government may have reclassified me as a "financial institution." Under the Gramm-Leach-Bliley Act, businesses that are engaged in "financial activities" must send notices to their customers about what they will disclose concerning the customers' "non-public information." 15 U.S. Code §§ 6801-6810. 16 C.F.R. Part 313. "Financial activities" include acts such as tax planning, debt collection and bankruptcy. Business litigation, personal injury, domestic relations, estate and trust litigation and criminal defense work may come under the new law. If so, I have become a "financial institution," like a credit card company, bank or stockbroker. Frankly, I have enough trouble balancing my own check-book. I never thought of myself as a financial institution before. Now, my clients are no longer clients: they are "customers" in the eyes of the Federal Trade Commission. You and I may have to send our clients notices of what we will disclose about their "non-public personal information," notwithstanding Business & Professions Code section 6068(e) and the vagaries of the attorney-client privilege.

Many changes are on the horizon that should improve litigation practice. For example, the Judicial Council is drafting proposed uniform statewide rules for class actions.

The Judicial Council has also circulated a preliminary draft of ethical standards for mediators in court-connected mediation programs for civil cases and established a Task Force on Jury Instructions. Its goal is to write jury instructions that both accurately state the law and are more easily understandable to jurors. The Litigation Section's Executive Committee with the help of experienced trial lawyers Michael

Fields and Rick Seabolt, has studied and commented on the second in-stallment of the draft of the proposed new civil jury instructions and has provided the Judicial Council with comments and observations regarding its draft ethical standards for mediators. These are ongoing projects, and I thank the Section members who give of their time and energy so that we can be informed and proactive.

Even standards of legal ethics are changing at an accelerating rate. The American Bar Association's Canons of Professional Ethics was promulgated in 1908. Its Model Code of Professional Responsibility was adopted in 1969. Its Model Rules of Professional Conduct were published in 1983. Now, ABA Ethics 2000 proposes fundamental, new changes and the Restatement of the Law Governing Lawyers is in its third edition (with its own changes). California's 1975 Rules of Professional Conduct were superseded in 1989. Those rules were again superseded in 1992. The Board of Governors has reactivated the Commission for the Revision of the Rules of Professional Conduct with the objective of reviewing the Rules of Professional Conduct again.

A recent report of the State Bar's Task Force on Multidisciplinary Practice advocates further modifications of the State Bar Act and the Rules of Professional Conduct, regarding the rules prohibiting fee sharing and partnerships with non-lawyers. The State Bar's Task Force on Multijurisdictional Practice was formed early this year, to assess and report whether and under what circumstances attorneys licensed to practice law in other jurisdictions should be permitted to practice law in California. Both of these reports require detailed study and analysis, because they involve important issues of delivery of legal services and protection of the public from conflicts of interest and from incompetent or unethical lawyering.

These changes in how we practice law and the standards to which we must adhere are matters deserving critical attention. The Litigation Section will continue to provide leadership in these and other areas.

As we work on these issues, I urge that the word "independence" be the touchstone of our efforts:

- First, we need to preserve our independence as advocates. We should resist those who argue for basic changes in adversarial zeal, reductions in lawyer autonomy and elimination of lawyer-client confidentiality.
- Second, we should safeguard the independence of our clients. We are advocates of our clients' causes. Those who attack lawyers who represent particular classes of clients denigrate the fundamental concept of respect for the dignity of the individual who appears before the judicial branch of government.
- Third, we should safeguard the independence of the judiciary. If we as lawyers do not defend the ability of judges to make decisions, we and our clients will be at risk. If judges succumb to threats of political reprisals, the litigation process will erode to little more than influence peddling.
- Fourth, we need to protect the jury system.

All citizens lose when those who fear the use of litigation to resolve disputes take away the rights of lawyers to advocate, of clients to decide whether to proceed or to settle, of judges to adjudicate or of juries to decide. Political force replaces justice.

My term as chair of the Section is at an end. We have met the goal of resurrecting the working committees of the Section, many of which fell apart during the dues debacle. By reactivating them, we have broadened member participation in the Section.

Keep our voice strong — volunteer to join a committee. We can and do make a difference.

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The journal is sent free to members of the Litigation Section.

The Litigation Section

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